IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Writ Appeal No.3958 of 2002

1.The State of Tamil Nadu, rep.
by its Secretary & commissioner,
Department of Housing and Urban
Development (G), Fort St. George,
Madras-600 009.

2.The Special Tahsildar(LA)
and Land Acquisition Officer,
Neighbourhood Scheme,
Nagercoil. ... Appellants/Respondents

Vs.

1.P.Pushpam

2.R.P.Santhi

3.Sujaritha .. Respondents/Petitioners

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 22.09.1999 made in W.P.No.240 of 1996. WP NO. 240/96 This petition filed under article 226 of the Constitution of India to issue a writ of certiorari or direction calling for the records relating to the declaration under G.O. Ms. No. 1115, Housing and Urban Development (G) Department, dated 01.08.1991 and published in T.N. Government Gazette No. 380 para II Section 2 dated 02.08.1991 pursuant to the notification in G.O. Ms. No. 524 Housing and urban Development Department dated 19.06.1990 and published in T.N. Govt. Gazette No. 27-C dated 11.07.1990 in Part II Section 2 and to quash the same in so far it related to the land bearing No. T.S. NO. 4577/7B in Vadiveeswaran Village, Agasteeswaran Taluk, Kanyakumari District relating to the petitioners is concerned.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Appellant : Mr.C.Thirumaran,
Government Advocate

For Respondents 1 to 3 : Mr.C.Vijayakumar for
Mrs.Chitra Sampath

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

Aggrieved by the order of the learned single Judge dated 22.09.1999 made in W.P.No.240 of 1996, the Government of Tamil Nadu, Housing Board and the Special Tahsildar(LA) and Land Acquisition Officer, Neighbourhood Scheme, Nagercoil, have filed the above appeal.

2. According to the respondents-petitioners, the land bearing survey No.L.5-7/7B to an extent of 0.18.81.797 Ares in Vadiveeswaram Village, Agasteeswaram taluk, Kanyakumari District, belonged to the husband of the first petitioner-first respondent was sought to be acquired. Her husband died on 7.08.1985 leaving the petitioners viz., his wife and two daughters, as his only legal representatives. Accordingly, they alone are entitled to the land in dispute. For implementation of the Neighbourhood Scheme, the respondents initiated acquisition proceedings and issued notification under Section 4(1) of the Land Acquisition Act (Central Act I of 1894) (hereinafter referred to as "the Act") and the same was published in the Tamil Nadu Gazette on 11.07.1990. Later, the Government issued declaration under Section 6 of the Act, which was published in the Government Gazette on 02.08.1991. It is the claim of the writ petitioners that after the death of the first petitioner's husband, the revenue records were transferred in the name of the writ petitioners and patta was also issued in their names. It is the grievance of the petitioners that despite the fact that the revenue records were transferred in the name of the petitioners and the revenue records stood in their name, no notice was issued to them for an enquiry under Section 5-A of the Act. They were not aware of any enquiry. It is also their claim that except notice for award enquiry, they have not received any other notice or intimation. Finally, it is stated that since the writ petitioners are lawful owners even as per the revenue records, the respondents ought to have issued notice and afforded opportunity. They also contended that at every stage, the notification that was issued stood in the name of the dead person, i.e. husband of the first petitioner.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

3. The learned single Judge, on a perusal of the records, came to the conclusion that the writ petitioners had participated in the enquiry and intimated the details regarding their ownership. However, even after such information, the declaration under Section 6 of the Act was made only in the name of the dead person. No doubt the petitioners received the notice under Sections 9 and 10 of the Act for award enquiry. However, the learned single Judge, after pointing out that since the notification under Section 4(1) and declaration under Section 6 of the Act stood in the name of the dead person, has allowed the writ petition.

4. It is clear from the materials placed that on the date of notification under Section 4(1) of the Act, the writ petitioners were the lawful owners. The particulars also show that after the death of the husband of the first petitioner i.e on 07.08.1985 before the publication of notification under Section 4(1) of the Act, at the instance of the writ petitioners, mutation in the revenue records were effected. In fact, they secured patta. In such circumstances, it is but proper on the part of the respondents to issue notification in the name of the writ petitioners. In addition to the same, the respondents ought to have atleast correctly mentioned the name of the writ petitioners as lawful owners of the land in the declaration made under Section 6 of the Act. Even according to the learned Government Advocate, the declaration was issued only in the name of the dead person.

5. The learned single Judge has considered all these aspects. Though the respondents have filed a counter affidavit, inspite of the specific averment in para 10 of the affidavit of the petitioners that their names were included in the revenue records, the notification issued under Section 4(1) and declaration issued under Section 6 of the Act mentioned only the name of the dead person, there is no specific answer or reply in the counter affidavit. In such circumstances, as rightly pointed out by the learned single Judge, even after the information, the declaration was issued only in the name of the dead person and the name of the petitioners were not shown as lawful owners of the land in acquisition. All these aspects have been considered and were accepted by the learned single Judge. On going through the entire materials, we are in agreement with the conclusion arrived at by the learned single Judge and we do not find any valid ground for interference. Accordingly, the writ appeal

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

fails and the same is dismissed. No costs. It is made clear that if the appellants so desire, they are free to proceed afresh in accordance with law.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary & commissioner,
State of Tamil Nadu,
Department of Housing and Urban
Development (G), Fort St. George,
Madras-600 009.

2.The Special Tahsildar(LA)
and Land Acquisition Officer,
Neighbourhood Scheme,
Nagercoil.

+ one cc to the Government Pleader sr no. 36207
+ one cc to Mrs. Chitra Sampath, Advocate sr no. 36143

SGL(CO)
NM(25.08.2006)

W.A.No.3958 of 200`2

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/